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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SKYWEST PILOTS ALPA ORGANIZING
COMMITTEE, *et al.*,

Plaintiffs,

vs.

SKYWEST AIRLINES, INC.,

Defendant.

CASE No. C-07-2688 CRB

**PLAINTIFF ALPA'S OPPOSITION
TO DEFENDANT'S MOTION TO
COMPEL**

Date: July 25, 2008

Time: 10:00 a.m.

Place: Courtroom 8, 19th Floor

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INTRODUCTION AND SUMMARY OF ARGUMENT

Defendant SkyWest Airlines, Inc. (“SkyWest”) seeks to obtain highly detailed financial information about entities that are complete strangers to the relationship at issue in this case. SkyWest’s discovery requests will not aid in the exploration of any issue that is relevant, under any conceivable theory, to the claims or defenses in this litigation and appears to have been interposed for no purpose other than to burden and harass Plaintiff Air Line Pilots Association, International (“ALPA”). Moreover, SkyWest’s discovery requests are wildly overbroad, going far beyond the information than even SkyWest (erroneously) asserts to be relevant, and would impose the unjustifiable burden on ALPA of spending hundreds of hours to compile transaction by transaction information that ALPA does not receive or track in uniform or electronic format, when SkyWest can far more conveniently obtain the information from other sources. The motion to compel should be denied.

The individual plaintiffs are pilots employed by SkyWest who wish to be represented by ALPA. There are also two organizational plaintiffs, the SkyWest Pilots ALPA Organizing Committee, an association of SkyWest pilots who wish to be represented by ALPA, and ALPA. Complaint (Doc. 1) at ¶¶ 6-16. Plaintiffs contend that SkyWest has interfered with their rights under the Railway Labor Act (“RLA”) by, *inter alia*, providing 100 percent of the funding for a sham union, known as the SkyWest Airlines Pilots Association (“SAPA”). The ultimate question before the Court is whether SkyWest’s funding of SAPA is unlawful. *See* 45 U.S.C. §152, Fourth (prohibiting carrier from using “funds” to “maintain[] or assist[] or contribut[e]” to any labor representative).

None of the detailed financial information that SkyWest seeks about ALPA’s relationship with carriers other than SkyWest bears remotely on the lawfulness of the SkyWest-SAPA relationship. The Court should deny the motion because SkyWest seeks information that will not “aid in the exploration of a[ny] material issue.” *Nat’l Union Fire Ins. Co. of Pittsburgh, Penn. v. Elect. Transit Inc.*, 2006 WL 1525809, at *2 (N.D. Cal. 2006) (quoting *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 993 (7th Cir. 2002)). Neither ALPA nor the carriers whose pilots it represents are parties to the SkyWest-SAPA relationship that is the subject matter of this lawsuit. Courts

1 routinely deny discovery requests where, as here, they involve relationships or transactions *other*
2 than those whose legality is at issue. *See, e.g., Walker v. Prudential Property and Cas. Ins. Co.*, 286
3 F.3d 1270, 1280 (11th Cir. 2002). This makes sense because each transaction “is a separate entity,”
4 *Beneficial Fin. Co. of New York v. Fontaine (In re Fontaine)*, 402 F. Supp. 1219, 1221 (E.D.N.Y.
5 1975), and actions by other parties “will not change the nature of Defendants’ allegedly similar
6 wrongful actions.” *United States ex. rel. Stephens v. Prabhu*, 163 F.R.D. 340, 342-43 (D. Nev.
7 1995). ALPA and the carriers whose pilots ALPA represents are entirely separate entities from
8 SAPA and SkyWest, and ALPA’s conduct cannot possibly change the nature of SkyWest’s unlawful
9 funding of SAPA. It bears emphasis that ALPA’s relationships with other carriers bears no factual
10 parallel whatsoever to SkyWest and SAPA. Unlike SAPA, ALPA is overwhelmingly funded by
11 sources entirely independent of any carrier, as is readily apparent from publicly available documents
12 which SkyWest can easily access over the internet.

13 As we explain more fully below, SkyWest has not served these requests in order to learn
14 information that it genuinely believes relates to this case. Under SkyWest’s theory, 100 percent
15 carrier financial support for a labor representative is beside the point because it is “only” when the
16 particular representative is actually dominated that the RLA is violated. *See* Def’s Mot. to Compel
17 (Doc. 206) at 3:17-20, 8:25. SkyWest’s theory renders its discovery requests doubly irrelevant
18 because they seek information about entities whose relationship is not at issue and on a topic
19 (financial support) that SkyWest claims does not matter. Moreover, even if “common” practice in
20 the industry were relevant (*cf.* Def’s Mot. to Compel (Doc. 206) at 9), which the caselaw above
21 shows it is not, it is clear from evidence introduced by SkyWest at the preliminary injunction trial,
22 prior to any discovery, that SkyWest is already well-versed with industry practice and has
23 propounded this discovery “not so much to learn what the facts are, but more to muscle” ALPA. *In*
24 *re Convergent Tech. Sec. Litig.*, 108 F.R.D. 328, 332 (N.D. Cal. 1985).

25 Indeed, the crux of SkyWest’s argument is that ALPA should have to produce the requested
26 information because it is the “mirror image” of the information that Plaintiffs have sought. *See*
27 Def’s Mot. to Compel (Doc. 206) at 2:15. Any such rule would produce the absurd result of
28 subjecting a plaintiff in any suit to all of the same discovery requests that it propounds on the

defendant, even though the plaintiff's conduct is not the subject matter of the lawsuit. SkyWest's acknowledgment that it seeks "mirror image" discovery confirms that it is engaged in nothing more than a "tit for tat." "Discovery should be denied when a party's aim is to . . . harass the person from whom he seeks discovery." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 352 n. 17 (1978); *see also* Fed. R. Civ. P. 26(g)(1) (discovery requests may not be "interposed for any improper purpose, such as to harass").

Furthermore, SkyWest seeks information that is far more conveniently available to SkyWest from other sources. The immense burden required of ALPA to produce the detailed information vastly outweighs whatever minimal probative value the union's financial information could provide. *See* Fed. R. Civ. P. 26(b)(2)(C)(i), (iii). For this independent reason, the motion should be denied.

STATEMENT OF FACTS

The underlying merits of this dispute are not currently before the Court on this motion to compel, but provide necessary context for analyzing Defendant's discovery requests. Plaintiffs brought this action against SkyWest for several violations of Section 2, Third and Section 2, Fourth of the RLA. Plaintiffs sought and the Court granted emergency relief on the ground that SkyWest's conduct improperly interfered with Plaintiffs' efforts to organize the pilots of SkyWest for collective bargaining purposes. *See* Order (Doc. 160). Plaintiffs' challenge to SkyWest's relationship to SAPA – an in-house representative wholly funded by the carrier – was left for further development through discovery, and that process is now underway. The legal issue ultimately before the Court is whether SkyWest's full financing of SAPA is lawful.

At issue in this motion to compel is whether SkyWest may seek discovery about relationships entirely separate from the SkyWest-SAPA relationship at issue in this case.¹

¹ Defendant seeks to compel ALPA to provide highly detailed information about the financial and in-kind support paid by carriers other than SkyWest to ALPA and its agents, on the following four topics covering the five year period from 2003 through 2007 (*see* Def's Mot. to Compel (Doc. 206) at 5-7, 9 n.1, & Exh. A): (1) compensation provided by airlines to ALPA officers, employees, agents, representatives, or committee members, including a "description of *each* expenditure, its purpose, and amount" (*see* Interrogatory 3); (2) financial support provided by airlines to ALPA, including a description of "*each* expenditure, its purpose, and amount" (*see* Interrogatory 4); (3) in-kind support provided by airlines to ALPA, including "the value of *each* (continued...)

1 Although, as Plaintiffs show below, Defendants' requests are not likely to lead to relevant evidence,
 2 and appear to have been interposed for improper purposes, Defendant already has access to
 3 sufficient information to support its contention.

4 In response to SkyWest's requests, ALPA *has already produced* to SkyWest responsive
 5 portions of its collective bargaining agreements ("CBAs"). Hall Decl. (Doc. 207) at ¶8. The
 6 portions of the CBAs that ALPA produced "reflect the nature and scope of financial arrangements
 7 between ALPA and the carrier[s] whose pilots ALPA represents." *See* Def's Mot. to Compel (Doc.
 8 206) at 5-7 (quoting ALPA's responses to Interrogatories and Document Requests).

9 In addition, extensive information about ALPA's finances is easily and publicly available to
 10 SkyWest through the Department of Labor's website.² ALPA files with the Department of Labor a
 11 detailed annual financial report, known as an "LM-2," which includes information about its cash
 12 receipts and disbursements, as well as assets and liabilities. Declaration of Margarita Lorenzetti
 13 ISO Pltf's Opp. at ¶10. ALPA's LM-2 reflects that it is overwhelmingly funded by sources entirely
 14 independent of any carrier whose pilots it represents. As set forth on ALPA's LM-2s, in fiscal year
 15 2007, for example, ALPA received a total of \$257 million in cash receipts, \$108 million of which
 16 derived from the dues and agency fees paid by the pilots it represents, and \$102 million of which
 17 derived from the sale of investments and fixed assets. *Id.* at ¶11.

18 Beyond producing its CBAs, ALPA objected to providing any further response to the four
 19 disputed categories on the basis that the requests were not calculated to lead to the discovery of
 20 relevant evidence, and were overbroad, unduly burdensome, and seeking evidence that could be
 21 obtained more easily elsewhere.³ Def's Mot. to Compel (Doc. 206) at 5-7 (same). ALPA has
 22

23 ¹(...continued)
 24 item of in-kind support and the basis used to calculate its value" (*see* Interrogatory 5); and (4)
 25 documents that ALPA has filed in prior litigation in which ALPA or its agents were alleged to have
 26 received compensation or financial support that violated Section 2, Fourth. (Emphases added.)

26 ² <http://erds.dol-esa.gov/query/getOrgQry.do>.

27 ³ In addition to the portion of the responses quoted in Defendant's brief, ALPA's response
 28 to SkyWest's interrogatories and ALPA's response to SkyWest's document requests stated that
 "Plaintiff objects to each discovery request to the extent it seeks information which is . . . equally
 (continued...)"

1 objected to producing a witness to testify on the contested subjects. Hall Decl. (Doc. 207) at ¶12.

2 LEGAL STANDARD

3 SkyWest may only discover material that is “relevant to any party’s claim or defense” (Fed.
4 R. Civ. P. 26(b)(1)). As the Supreme Court has made clear, “discovery should be denied when a
5 party’s aim is to . . . harass the person from whom he seeks discovery.” *Oppenheimer Fund, Inc. v.*
6 *Sanders*, 437 U.S. 340, 352 n. 17 (1978); *see also* Fed. R. Civ. P. 26(g)(1) (discovery requests may
7 not be “interposed for any improper purpose, such as to harass”).

8 Further, SkyWest is not entitled to seek information that is available from a “more
9 convenient, less burdensome, or less expensive” source, or unduly burdensome considering its
10 “likely benefit.” Fed. R. Civ. P. 26(b)(2)(C). SkyWest must demonstrate that “the proportionality
11 and other requirements of” Rule “26(b)(2) are satisfied.” Civ. L. R. 37-2.

12 “In deciding a motion to compel, courts must evaluate such factors as timeliness, good
13 cause, utility and materiality.” *Nat’l Union Fire Ins. Co. of Pittsburgh, Penn. v. Elect. Transit Inc.*,
14 2006 WL 1525809, at *2 (N.D. Cal. 2006) (quoting *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 993
15 (7th Cir. 2002)). In accordance with Federal Rule of Civil Procedure 26, the court “may deny
16 motions to compel [because they] would not aid in the exploration of a material issue . . . [or
17 because] the discovery sought would impose an undue burden on the responding party or . . . its
18 benefits are outweighed by its burdens.” *Id.* (citations omitted).

19 ARGUMENT

20 I. THE SUBJECT DISCOVERY REQUESTS DO NOT AID IN THE EXPLORATION 21 OF ANY ISSUE MATERIAL TO EITHER PLAINTIFFS’ CLAIM OR SKYWEST’S 22 DEFENSE

23 The challenged discovery fails to aid in the exploration of any issue that is material to either
24 Plaintiffs’ claim or SkyWest’s defense. Both the claim and the defense are specific to the
25 relationship between two entities: SkyWest and SAPA. The requested discovery seeks information
26 about ALPA and air carriers other than SkyWest – entities that are strangers to the relationship at

27 ³(...continued)
28 available to defendant, or publicly available . . . , thus requiring Plaintiff to incur unnecessary
expense and burden in responding.” Decl. of Elizabeth Ginsburg ISO Pltf’s Opp. at ¶12.

1 issue in this case. These separate union-company relationships have no bearing on the SkyWest-
 2 SAPA relationship and shed no light on the question whether SkyWest's contribution of 100 percent
 3 of the funds necessary for "maintaining or assisting or contributing to" SAPA is unlawful. 45
 4 U.S.C. §152, Fourth; *cf. Food Lion, Inc. v. United Food and Commercial Workers Int'l Union*, 103
 5 F.3d 1007, 1013 (D.C. Cir. 1997) (concluding that documents related to *other* unions' actions vis-à-
 6 vis *other* employers were irrelevant to the question of a defendant union's "intent in carrying out" a
 7 lawsuit against the plaintiff employer).

8 **A. ALPA's relationship to non-SkyWest carriers bears no nexus to the separate**
 9 **SkyWest-SAPA relationship in this case**

10 The requested detailed information about the compensation, financial, and in-kind support
 11 that ALPA and its agents receive from carriers other than SkyWest is not reasonably calculated to
 12 lead to the discovery of relevant evidence under any theory of the case.

13 1. Plaintiffs' arguments in this case will focus on the legal significance of the fact that
 14 SkyWest admittedly provides 100 percent of the expenses that SAPA incurs in purporting to deal
 15 with SkyWest and represent pilots vis-à-vis SkyWest management. But the funding arrangements
 16 bargained at arm's length between carriers other than SkyWest with labor unions with independent
 17 funding, such as ALPA, have no connection whatsoever to the analysis of SkyWest's financial
 18 support for SAPA. This is so for two reasons. First, neither ALPA nor any of the carriers whose
 19 pilots it represents are parties to the SkyWest-SAPA relationship at issue in this case. Second,
 20 ALPA's carrier relationships cannot be analogized to the SkyWest-SAPA context. Publicly
 21 available records make clear that in sharp contrast to SAPA, which SkyWest concedes is *100*
 22 *percent company-financed*, ALPA is overwhelmingly funded by membership dues and agency fees,
 23 and other sources entirely independent of the carriers whose pilots ALPA represents. Lorenzetti
 24 Decl. at ¶11 (in 2007, ALPA had total cash receipts of \$257 million, including \$108 million of from
 25 dues and agency fees and \$102 million from the sale of investments and fixed assets).

26 Nor do ALPA's receipts have any bearing on SkyWest's theory of the case. SkyWest claims
 27 that even complete funding of a labor organization does not violate Section 2, Fourth unless such
 28 funding results in its actual domination by the carrier. *See* Def's Mot. to Compel (Doc. 206), at

3:17-20, 8:25-26. In other words, under SkyWest’s theory, it is not financial support, but “actual . . . domination” of the particular labor representative that matters. *Id.* at 3:20. If this is so, financial arrangements between other unions and carriers have no relevance.

Plaintiffs strenuously disagree that a violation of Section 2, Fourth requires a showing under the unique facts in this case, that SkyWest has actually dominated SAPA, but the Court need not resolve the issue now. ALPA’s relationship to other carriers involves entirely different entities than those at issue here. And SkyWest cannot claim that ALPA’s *financial* relationship to these other carriers aids in its defense, when its contention is that domination, not financing, matters. In no way would ALPA’s financial information aid in the case-specific exploration of whether SAPA is dominated by SkyWest. *Cf. World Wrestling Fed’n Entm’t, Inc. v. William Morris Agency, Inc.*, 204 F.R.D. 263, 265 (S.D.N.Y. 2001) (denying plaintiff’s motion for information about defendant’s other contracts: “[T]reatment of one contracting party in the entertainment field does not really illuminate or is not really relevant to how another party in the entertainment field is treated”).

2. Appropriately, courts routinely conclude that discovery requests are irrelevant when they involve relationships or transactions *other* than those whose legality is at issue.⁴ This makes sense because each transaction “is a separate entity,” *In re Fontaine*, 402 F. Supp. at 1221; and actions by other parties “will not change the nature of Defendants’ allegedly similar wrongful

⁴ See e.g., *Walker v. Prudential Property and Cas. Ins. Co.*, 286 F.3d 1270, 1280 (11th Cir. 2002) (in employment discrimination case, denying discovery of settlement agreements involving managers at defendant company because those managers’ discriminatory animus was not at issue in this case); *Atkinson v. Denton Publ’g Co.*, 84 F.3d 144, 148 (5th Cir. 1996) (denying discovery of personnel files because many of them related to individuals who had no contact with supervisor whose actions were challenged); *Caliper Technologies Corp. v. Molecular Devices Corp.*, 213 F.R.D. 555, 561 (N.D. Cal. 2003) (denying motion to compel discovery of plaintiff’s license agreements for patents other than the one in the suit); *United States ex. rel. Stephens v. Prabhu*, 163 F.R.D. 340, 342-43 (D. Nev. 1995) (in false claims case, denying discovery of Medicare documentation submitted by companies other than defendants to Medicare provider); *Superhype Publ’g Inc. v. Parrott Dev. Corp.*, 163 F.R.D. 5, 7 (W.D. Mich. 1995) (holding that information about licenses received by establishments other than the defendant business was irrelevant to claim that defendant violated copyright law by failure to obtain proper license); *Beneficial Fin. Co. of New York v. Fontaine (In re Fontaine)*, 402 F. Supp. 1219, 1221 (E.D.N.Y. 1975) (holding that loan applications submitted to plaintiff, other than those of the defendant, were irrelevant to the issue of whether plaintiff relied on false statement in the defendant’s loan application because “each loan is a separate entity”).

1 actions.” *Prabhu*, 163 F.R.D. at 343. Similarly, here, ALPA and the carriers whose pilots ALPA
2 represents are entirely separate entities from SAPA and SkyWest, and ALPA’s conduct cannot
3 possibly change the nature of SkyWest’s unlawful funding of SAPA.

4 Notably, courts deny even requests for discovery about other transactions involving one of
5 the same entities whose conduct is at issue. *See, e.g., World Wrestling Fed’n Entm’t, Inc.*, 204
6 F.R.D. at 265; *Matter of West Chicago Thorium Tailings Consol. Pretrial Proceeding*, 919 F. Supp.
7 at 317; *Hendershott v. Skipper*, 160 F.R.D.129, 130 (D. Or. 1995) (in excessive force case, denying
8 prisoner’s motion to compel discovery about other uses of force by named defendants). SkyWest’s
9 requests for ALPA’s financial information are even further afield. Not only does SkyWest seek
10 information about different transactions, none of the entities about which it seeks information is
11 party to the SkyWest-SAPA relationship at issue here. There is simply no “nexus” between
12 SkyWest’s unlawful funding of SAPA and ALPA’s relationship to other carriers. *Atkinson*, 84 F.3d
13 at 148 (denying discovery because there was no “nexus” between an individual’s allegedly wrongful
14 acts and acts that do not involve that individual).

15 3. SkyWest argues nevertheless that ALPA’s financial relationship with other carriers is
16 relevant because its discovery requests are the “mirror image” of Plaintiffs’ requests. *See* Def’s
17 Mot. to Compel (Doc. 206) at 2:15, 8:24. This is not a cognizable principle of relevance. Financial
18 information about one party is not relevant simply because identical information about the *opposing*
19 party is relevant. Any such rule would produce absurd results. It would mean, for example, that an
20 organization sued for financial wrongdoing could seek information about the plaintiff’s bank
21 accounts, simply because the defendant’s financial transactions – the subject matter of the lawsuit –
22 were discoverable. Indeed, SkyWest’s insistence on “mirror image” discovery requests for ALPA’s
23 detailed financial information – particularly when SkyWest dismisses the legal significance of
24 carrier financial support – makes clear that SkyWest is less interested in obtaining information for
25 its defense than in punishing ALPA for participating in this suit. *See Oppenheimer Fund*, 437 U.S.
26 at 352 n. 17 (discovery should be denied when a party’s aim is to . . . harass the person from whom
27 he seeks discovery”).

28 4. Alternatively, SkyWest argues that ALPA’s financial information is needed to show

1 that “it is common for airline employee unions generally – and ALPA specifically – to receive
 2 financial support from the carriers whose employees they represent.” Def’s Mot. to Compel (Doc.
 3 206) at 9:7-9. SkyWest fails to note that, in stark contrast to the SkyWest-SAPA relationship, these
 4 “common” practices to which SkyWest alludes result from arm’s length negotiations between
 5 carriers and certified collective bargaining representatives which are overwhelmingly financed from
 6 independent sources, and are entirely distinguishable from the 100 percent subsidized SkyWest-
 7 SAPA relationship at issue here. *See* Lorenzetti Decl. at ¶¶3-4, 11.

8 Even if there were any factual parallel between these other union-carrier relationships and
 9 the captive SkyWest-SAPA relationship, “common” industry practice simply bears no relationship
 10 to any legal theory of the case. Plaintiffs contend that the arrangement under which SkyWest funds
 11 100% of SAPA’s expenses and SAPA purports to be the pilots’ “representative” is a blatant and
 12 facial violation of Section 2, Fourth of the RLA, which expressly prohibits a carrier from using its
 13 funds to “maintain[] or assist[] or contribut[e] to any” labor representative. 45 U.S.C. §152, Fourth.
 14 Nothing in Section 2, Fourth suggests an exception to this prohibition for “common” practice. And
 15 absent a court ruling, the mere fact that a practice is common does not suggest that it is *legal*.
 16 *Compare Barthelemy v. ALPA*, 897 F.2d 999, 1016 (9th Cir. 1990) (per curiam) (recognizing the
 17 “minor assistance” to unions from employers that *courts* have frequently held to be permissible).

18 In any event, SkyWest’s theory of the case, which focuses on actual domination of the
 19 *particular* labor representative, renders the matter of common practice irrelevant. *Cf. Am. Fast*
 20 *Freight, Inc. v. Nat’l Consolidation & Dist., Inc.*, 2008 WL 570810, at *4 (W.D. Wash. 2008)
 21 (denying motion to compel discovery about *plaintiffs’* corporate form because “typical industry
 22 practices” are not relevant to deciding whether to pierce *defendants’* corporate form). SkyWest’s
 23 “actual domination” theory rests entirely on an analysis of the specific SkyWest-SAPA relationship
 24 because, in its view, payments to labor organizations that could be illegal in some contexts may be
 25 legal in others, depending on the specific facts of how those payments affect a particular labor
 26 representative in a particular context.

27 Furthermore, the record suggests that SkyWest has propounded discovery on ALPA “not so
 28 much to learn what the facts are, but more to muscle” ALPA. *In re Convergent Tech. Sec. Litig.*,

1 108 F.R.D. 328, 332 (N.D. Cal. 1985). SkyWest is already familiar with common industry practice
 2 and had no need to propound burdensome discovery on ALPA to find out more about this topic.
 3 Before any discovery was conducted in this case, SkyWest introduced excerpts at the preliminary
 4 injunction trial from ALPA's CBAs with various other carriers. *See* Def's Mot. to Compel (Doc.
 5 206) at 3:24-27. It is not surprising that SkyWest would have easy access to ALPA's agreements
 6 with other carriers or that it would generally be familiar with industry practice. Its counsel is
 7 experienced in representing airlines in suits involving unions including ALPA, *see, e.g., ALPA v.*
 8 *NLRB*, 525 F.3d 862 (9th Cir. 2008) (SkyWest's counsel listed as counsel for carrier in case); *ALPA*
 9 *v. Midwest Exp. Airlines, Inc.*, 279 F.3d 553 (7th Cir. 2002) (same); *ALPA v. Trans States Airlines,*
 10 *Inc.*, 2007 WL 2609875 (E.D. Mo. 2007) (same), and holds itself out as having "unmatched
 11 experience in the labor and employment issues unique to airlines." *See*
 12 <http://www.fordharrison.com/showindustry.aspx?Show=578>.

13 **B. ALPA's legal briefs in other cases do not shed light on any material facts**

14 The remainder of SkyWest's requested discovery, for litigation documents filed by ALPA in
 15 other cases, is even more meritless. Under no theory of Section 2, Fourth could ALPA's legal briefs
 16 lead to evidence about SkyWest and SAPA. ALPA's *legal* arguments in other cases involving other
 17 carriers do not constitute evidence or binding precedent of any sort and simply are not "reasonably
 18 calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). The Federal
 19 Rules do not permit discovery to aid a party's legal research. Any *facts* about ALPA's finances
 20 reflected in such documents are irrelevant for the reasons described above. The requested ALPA
 21 documents involve other parties, other facts, and other claims. *Cf. Matter of West Chicago Thorium*
 22 *Tailings Consol. Pretrial Proceeding*, 919 F. Supp. 315, 317 (N.D. Ill. 1996) (denying plaintiff's
 23 motion to discover evidence related to prior case against defendant because it "involv[ed] a different
 24 facility, different plaintiffs, different injuries, and completely different facts").

25 **II. SKYWEST'S REQUESTS ARE OVERBROAD AND UNDULY BURDENSOME**

26 Even if the Court were to conclude that the requested financial information has some
 27 minimal probative value, it should still deny SkyWest's motion to compel. SkyWest's own
 28 description confirms that it seeks ALPA's financial information primarily to engage in a tit-for-tat

1 game of “mirror image” discovery. *See* Def’s Mot. to Compel (Doc. 206), at 2:15, 8:24. The
 2 company’s strategy of harassment and punishment through discovery is not permissible. *See*
 3 *generally* Fed. R. Civ. P. 26(g). SkyWest seeks information that is far more conveniently available
 4 to SkyWest from other sources, and that would place immense burden on ALPA to produce. The
 5 hundreds of hours ALPA would need to compile the transaction-by-transaction information sought
 6 entirely overshadow whatever minimal probative value its financial information could provide. *See*
 7 Fed. Rs. Civ. P. 26(b)(2)(C)(i), (iii); *see* Civ. L. R. 37-2 (party seeking to compel discovery must
 8 show that “the proportionality and other requirements of FRCivP 26(b)(2) are satisfied.”).

9 **A. SkyWest’s requests for financial information are overbroad**

10 SkyWest is seeking extremely detailed financial information: the amount, date, and purpose
 11 of *each* transaction between ALPA, the over 40 airlines with which ALPA has agreements, and
 12 ALPA officials between 2003 and 2007. This level of detail is completely unnecessary to establish
 13 even what SkyWest erroneously asserts to be relevant.

14 SkyWest argues that it seeks to understand the “common” practices among airline employee
 15 unions, and that ALPA should therefore be compelled to produce information “regarding the *types*
 16 of compensation, financial support, and in-kind support received by ALPA from the carriers it
 17 represents.” Def’s Mot. to Compel (Doc. 206) at 9:7-16 (emphasis added). Even if “common”
 18 practices bore any relation to the claims and defenses in this case – which they do not, *see supra* at
 19 8-10 – ALPA has already produced to SkyWest its CBAs (including associated letters of
 20 understanding and memoranda of understanding) which include routine agreements between ALPA
 21 and air carriers regarding what SkyWest terms compensation and other financial flows between air
 22 carriers and ALPA and its members (Lorenzetti Decl. at ¶4). These documents “reflect the nature
 23 and scope of financial arrangements between ALPA and the carrier[s] whose pilots ALPA
 24 represents.” Def’s Mot. to Compel (Doc. 206) at 6-7 (quoting ALPA’s responses to Defendant’s
 25 Document Requests 5-7).

26 SkyWest has entirely failed to explain why these already-produced CBAs do not satisfy
 27 SkyWest’s purported need for information about the “types” of practices between ALPA and the
 28 carriers whose pilots it represents. Def’s Mot. to Compel (Doc. 206) at 9:14. Producing each

specific, individual transaction that flows from these agreements will immensely burden ALPA, but will not further illuminate any “types” of common practice.

B. SkyWest’s requests are burdensome and harassing, and seek information available from more convenient sources

SkyWest’s requests are also burdensome and require information that is equally available to SkyWest or is not readily available to ALPA.

1. Compensation from airlines to ALPA officers, employees, agents, representatives, or committee members. SkyWest Interrogatory 3 , Document Request 5, and its Deposition Notice seek the compensation provided by airlines “whose pilots are represented by ALPA to any local or national ALPA officer, employee, agent, representative, or committee member . . . by virtue of his or her status and/or work performed as a local or national ALPA officer, employee, agent, representative, or committee member.” SkyWest requests “each expenditure, its purpose, and amount,” except for information about compensation “which ALPA reimbursed.” *See* Def’s Mot. to Compel (Doc. 206) at 5:1-7, 6:3-8, Exh. A, 2:17-20.

Even if it were minimally probative – which it is not – this discovery is so burdensome to ALPA that it should not be compelled on that ground alone. SkyWest seeks information about each individual item of “compensation *provided by any airline* whose pilots are represented by ALPA” to any ALPA official, representative, committee member, or employee. (SkyWest Interrogatory 3, Document Request 5) (emphasis added). ALPA’s burden of reviewing and then compiling all of its records related to various airline carriers to reproduce information *those airlines* have in far more convenient form greatly outweighs any benefit of such information to SkyWest. *See* Fed. R. Civ. P. 26(b)(2)(C)(i) (“court must limit” discovery where it “can be obtained from some other source that is more convenient, less burdensome, or less expensive”).

Like any employer, carriers themselves routinely record the amount, purpose, and date of all compensation that they provide to ALPA pilots. ALPA, on the other hand, would only be able to respond to and generate the transaction-by-transaction compensation information that SkyWest seeks with hundreds of hours of work. This information is not received by ALPA in a uniform, transaction-by-transaction format. Furthermore, ALPA does not record all the information electronically, or track it in any other uniform transaction-by-transaction format. ALPA cannot

1 generate any report from its electronic accounting system that would either show the instances,
 2 purposes and amount of the compensation covered by SkyWest's requests, or readily identify the
 3 documents that would show such information. Thus, to respond accurately to SkyWest's requests,
 4 ALPA would need to review thousands of paper documents and approximately 57,000 lines of
 5 electronic data to first identify those that are relevant, and then reconcile those records. Lorenzetti
 6 Decl. ¶¶6-9.

7 This burden far outweighs any benefit such detail may provide SkyWest. *See* Fed. R. Civ. P.
 8 26(b)(2)(C)(iii); *cf. Coleman v. Am. Red Cross*, 23 F.3d 1091, 1098 (6th Cir. 1994) (denying as
 9 overly burdensome request that would require Red Cross to "search every file that exists at National
 10 Headquarters for any documents that might be of any relevance"); *Brew v. Johnson*, 2008 WL
 11 686433, at *5 (E.D. Cal. 2008) (concluding that it would be unduly burdensome to compel
 12 defendant to gather statistics that defendant's employer did not maintain).⁵ Because, unlike ALPA,
 13 air carriers have electronic or otherwise accessible records of the compensation they pay to pilots,
 14 SkyWest should seek this information from the carriers instead. *See* Fed. R. Civ. P. 26(b)(2)(C)(i).

15 2. Financial support from airlines to ALPA. SkyWest Interrogatory 4, Document Request 6,
 16 and its Deposition Notice seek "a description of each expenditure, its purpose, and amount" for any
 17 "financial support" that ALPA receives from airlines whose pilots it represents, including
 18 reimbursed expenses. *See* Def's Mot. to Compel (Doc. 206) at 5:13-16. 6:14-17, Exh. A, 2:20-24.

19 ALPA understands these requests to seek ALPA's cash receipts from carriers. In addition to
 20 being overbroad, *see supra* at 11-12, this request appears designed only to harass and burden ALPA
 21 for participating in this lawsuit. Most, if not all, of the information SkyWest seeks is a matter of
 22 public and easily accessible record. ALPA reports the amount and description of each cash receipt
 23 from carriers on Schedule 14 of its LM-2 reports to the Department of Labor. Lorenzetti Decl.

25 ⁵ ALPA's option, pursuant to Federal Rule of Civil Procedure 33(d), to respond to the
 26 interrogatory request by producing documents rather than compiling the information from these
 27 records does not mitigate the burden because ALPA's burden simply to produce the relevant
 28 documents is substantial. Identifying responsive documents alone would require ALPA to review
 tens of thousands of lines of electronic data and thousands of paper documents. Lorenzetti Decl. at
 ¶8. And the records with responsive information are intermingled with records unrelated to
 SkyWest's compensation requests. *Id.* at ¶9. ALPA should not be required to hand over documents
 that contain substantial unrelated information.

¶¶10, 12; *see also* 29 C.F.R. §403.3; Department of Labor, “What do I report in Schedule 14-Other Receipts?,” *available at* <http://www.dol.gov/esa/olms/regs/compliance/lm2faqsched1419.htm#53> (accessed June 28, 2008). The reports from 2000 to 2007 for ALPA are publicly available on the Department of Labor website, at <http://erds.dol-esa.gov/query/getOrgOry.do>.

Indeed, SkyWest’s willingness to pay for a motion to compel despite the ease of downloading information that will entirely or almost entirely address what SkyWest insists is an important request suggests that the purpose behind SkyWest’s request is nothing more than to harass. *Cf. In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328 at 331, 332 (stating that “counsel . . . *must* make a common sense determination . . . that the information sought is of sufficient potential significance to justify the burden the discovery probe would impose [and] that the discovery tool selected is the most efficacious of the means that might be used”).

As a result, ALPA should have no duty to produce cash receipts information. The material “can be obtained from some other source that is more convenient.” Fed. R. Civ. P. 26(b)(2)(C)(i); *see also Baum v. Village of Chittenango*, 218 F.R.D. 36, 40 (N.D.N.Y. 2003) (“compelling discovery from another is unnecessary when the documents sought are equally accessible to all”); *Dushkin Publ’g. Group, Inc. v. Kinko’s Service Corp.*, 136 F.R.D. 334, 335 (D.D.C. 1991) (“It is well established that discovery need not be required of documents of public record which are equally accessible to all parties.”). SkyWest has made no showing to the contrary.

Nor should ALPA be compelled to produce information beyond that contained in its LM-2s. To provide additional detail about any cash receipts, ALPA would need to review its *daily* deposit files for the five-year period over which SkyWest seeks information and seek any clarifying information from individuals familiar with the transaction, a process that would require several weeks. Lorenzetti Decl. at ¶13. Again, SkyWest has made no showing that this information is so important as to justify such a burden. *See* Fed. R. Civ. P. 26(b)(2)(C)(iii); Civ. L. R. 37-2.

3. In-kind support from airlines to ALPA. SkyWest Interrogatory 5, Document Request 7, and its Deposition Notice seek the value and an explanation of the calculation of such value of any “in-kind support provided by any airline whose pilots are represented by ALPA to ALPA.” *See* Def’s Mot. to Compel (Doc. 206), at 5:22-23, 6:24, Exh. A, 2:25-26. Regardless of its relevance,

ALPA should not be required to produce such information. In-kind support the union may receive – such as refreshments at a meeting – is not ordinarily recorded, tracked, or valued by ALPA. Lorenzetti Decl. at ¶¶14-15. As with the compensation information it seeks, SkyWest should request this in-kind support information from carriers instead. The carriers themselves are far more likely than ALPA to have records of the type that SkyWest seeks. *See* Fed. R. Civ. P. 26(b)(2)(C)(i); Civ. L. R. 37-2.

4. Legal documents filed by ALPA. SkyWest Interrogatory 13 and SkyWest Document Request 30 seek information about documents that ALPA filed in *Barthelemy* and other litigation in which it was alleged to have received compensation or financial support from airlines that violated Section 2, Fourth. Def’s Mot. to Compel (Doc. 206) at 7:8-12, 7:15-19, Exh.A at 2:15-17. As described above, the requested information is an improper attempt to conduct legal research through discovery, and cannot possibly “lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). Moreover, like the LM-2 forms, any litigation pleadings would be a matter of public record. SkyWest does not make any attempt to explain why seeking such information from ALPA is more convenient than seeking it directly from courts or other fora. Thus, even if minimally probative, this information should not be compelled. *See* Fed. R. Civ. P. 26(b)(2)(C); *Baum*, 218 F.R.D. at 40; *Dushkin*, 136 F.R.D. at 335.

CONCLUSION

For the foregoing reasons, SkyWest’s requested discovery does not meet the requirements of Federal Rule of Procedure 26(b). Its motion to compel should be denied.

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Respectfully submitted

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